Supreme Court, U.S.
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No. 87-873

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNION DE TRANSPORTS AERIENS,

Petitioner,

—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

I. Under Fed.R.Civ.P. 11 relating to sanctions for an attorney's misstatements in pleadings, is it required as a matter of law or merely discretionary for a district court to find that an attorney violated Rule 11 when, on undisputed facts, an attorney certified and later misused pleadings which he knew to be false?

II. Is the correct standard of appellate review in Rule 11 cases a *de novo* determination of whether specific conduct violates the Rule or rather, as the court of appeals below held, limited to ascertaining whether the district court abused its wide discretion in determining whether grounds exist to support Rule 11 sanctions?

LIST OF PARTIES

In addition to petitioner and respondent, parties to the proceedings in the Court of Appeals for the District of Columbia Circuit whose judgment is sought to be reviewed included the parties set out at pages 23a-26a of the Appendix. None of these parties was a party to the appeal of the Rule 11 sanction motion which is the subject of this petition.

Pursuant to Supreme Court Rule 28.1, to the knowledge of Counsel, Union de Transports Aeriens has no parent, subsidiary or affiliate having outstanding securities in the hands of the public in the United States.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 2

RULE INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

THE CONFLICT AMONG THE CIRCUIT COURTS OVER THE STANDARD OF REVIEW IN RULE 11 SANCTION CASES HAS INHIBITED ACCOMPLISHMENT OF THE RULE'S BENEFICIAL PURPOSE 5

CONCLUSION 12

APPENDIX

Opinions and Judgments Below

Court of Appeals Opinion of September 1, 1987 . 1a

District Court Memorandum of June 30, 1986 ... 17a

Other Parties Below 23a

Answers to Interrogatories in *Laker I* 27a

TABLE OF AUTHORITIES

Cases:	PAGE
Albright v. Upjohn Co., 788 F.2d 1217 (6th Cir. 1986)	8, 10
Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984 (4th Cir. 1987)	8
Davis v. Vesland Enterprises, 765 F.2d 494 (5th Cir. 1985)	9, 10
Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987)	8
Eastway Construction Corp. v. City of New York, 762 F.2d 243 (2d Cir. 1985)	5, 6, 9, 10
Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986)	5, 9
Greenberg v. Sala, 822 F.2d 882 (9th Cir. 1987)	9
Hudson v. Moore Business Forms, Inc., 827 F.2d 450 (9th Cir. 1987)	5, 9, 10
Kurkowski v. Volcker, 819 F.2d 201 (8th Cir. 1987)	10
Ordower v. Feldman, 826 F.2d 1569 (7th Cir. 1987)	8
R.K. Harp Investment Corp. v. McQuade, 825 F.2d 1101 (7th Cir. 1987)	8
Robinson v. National Cash Register Co., 808 F.2d 1119 (5th Cir. 1987)	9
Shivangi v. Dean Witter Reynolds, Inc., 825 F.2d 885 (5th Cir. 1987)	9
Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa, ____ U.S. ____, 107 S.Ct. 2542 (1987)	11
Stevens v. Lawyers Mutual Liability Insurance Co. of North Carolina, 789 F.2d 1056 (4th Cir. 1986)	8

PAGE

Thomas v. Capital Security Services, Inc., 812 F.2d 984 (5th Cir. 1987) 9

Westmoreland v. CBS, Inc., 770 F.2d 1168 (D.C. Cir. 1985) 6, 8, 10

Zaldivar v. City of Los Angeles, 780 F.2d 823 (9th Cir. 1986) 6, 10

Statutes:

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1337 2

Rules:

Federal Rules of Civil Procedure, Rule 11 ..... *passim*

Other Authorities:

Nelken, *Sanctions Under Amended Federal Rule 11—Some "Chilling" Problems in the Struggle Between Compensation and Punishment*, 74 Geo. L.J. 1313 (1986) 6

Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181 (1985) 5

Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment 6

IN THE

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No. _____

UNION DE TRANSPORTS AERIENS,

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—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner Union de Transports Aeriens respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit, entered in *Adams v. Pan American World Airways, Inc.* on September 1, 1987.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 828 F.2d 24 and it is reprinted at page 1a of the Appendix to this petition.

The memorandum opinion of the District Court for the District of Columbia (Green, D.J.) from which appeal was taken is reported at 640 F. Supp. 683. It is reprinted in the Appendix hereto, p. 17a.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on September 1, 1987. Petition for rehearing was denied on October 23, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RULE INVOLVED

Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

STATEMENT OF THE CASE

In the civil action from which this petition arises (*Adams v. Pan American World Airways, Inc.*, Civil Action Nos. 86-0304, 86-0629), the plaintiffs are all former employees of the "Laker Group of Companies" who invoked the jurisdiction of the United States District Court for the District of Columbia under 28 U.S.C. § 1337 seeking treble damages for injuries purportedly sustained as a result of an alleged price-fixing conspiracy among defendant airlines to eliminate Laker Air-

ways as a competitor. This antitrust litigation is based on the same operative facts as those in an earlier litigation commenced in the same district court in 1983 by the liquidator for Laker Airways. *Laker Airways Ltd. v. Union de Transports Aeriens, et al.*, Civil Action No. 83-2791, consolidated with Civil Action Nos. 82-3362, 83-0416 (hereinafter "*Laker I*"). *Laker I* was settled in 1985. Respondent Robert M. Beckman, counsel for plaintiffs in the instant action, was also counsel for the plaintiff in *Laker I*.

In this action, petitioner Union de Transports Aeriens (hereinafter "UTA") moved the district court for an order pursuant to Federal Rule of Civil Procedure 11 granting sanctions against respondent for signing a complaint containing allegations about UTA which he knew to be false.

Respondent prepared and signed the original complaint in this action alleging that UTA competed with Laker Airways and was a participant in the alleged price-fixing conspiracy. It is conceded that Mr. Beckman had personal knowledge that these allegations were untrue. Indeed, Mr. Beckman admitted in the court below that he knew these allegations were false having "learned from discovery [in Laker I] that UTA did not compete directly on international routes with Laker Airways and was not a participant in the price-fixing by other defendants . . ." (Brief of Cross-Appellee filed December 29, 1986, p. 5). Notwithstanding that Mr. Beckman knew the allegations to be false (which he justified as an error made in haste in preparing the complaint), once the matter was called to his attention, he continued to rely on the false assertions in resisting a motion to dismiss the complaint. It was only after a formal demand that he moved to amend the complaint.

Thus, the case before the court of appeals was not a case where counsel, acting in haste to meet a deadline, conducted an incomplete investigation of the factual accuracy of the allegations before filing a complaint. There was no need to investigate—respondent already had actual knowledge of the operative facts well before he signed the instant complaint. In

fact, respondent had personally conducted the deposition of UTA's chief executive wherein UTA's route maps were examined, and he had signed sworn interrogatory responses in *Laker I* conceding that UTA did not compete with Laker Airways and did not participate in any alleged price-fixing in the transatlantic market (*see* Appendix at pp. 27a-29a). As the court of appeals noted, "[t]he only market where an illegal restraint is alleged to have taken place is the transatlantic air transportation market," and "UTA's only service originating in the United States was between Los Angeles and Tahiti." *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24, 27 and 32 (D.C. Cir. 1987), Appendix at pp. 6a, 16a.

Respondent urged the courts below to conclude that his conduct was the result of simple oversight. This facile explanation is belied by the fact that when the false allegations were detailed in the supplemental memorandum filed by UTA in support of defendants' motion to dismiss, Mr. Beckman responded, not by correcting the erroneous allegations, but by asserting that UTA had raised an issue of fact requiring the resumption of discovery. This response was manifestly intentional and can hardly be deemed inadvertent.

In a memorandum opinion dated June 30, 1986, Judge Harold H. Greene of the district court denied UTA's motion pursuant to Rule 11 for sanctions against Mr. Beckman. Judge Greene made no findings—he simply denied the motion without explanation. Appendix at p. 22a. Petitioner appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. On September 1, 1987, the court of appeals affirmed the decision of the district court holding that although the decision of the district court was "lamentably terse," its review of the matter was limited to whether the district court had abused its "wide discretion."[1] Appendix at p. 16a.

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1 It is only the affirmance of the district court's decision regarding UTA's motion for sanctions that is the subject of this petition by UTA. UTA raises no question with respect to the court of appeal's affirmance of the district court's dismissal of the complaint based upon plaintiff's lack of standing (which was correctly decided in the same opinion by the court of appeals in a consolidated appeal).

REASONS FOR GRANTING THE WRIT

THE CONFLICT AMONG THE CIRCUIT COURTS OVER THE STANDARD OF REVIEW IN RULE 11 SANCTION CASES HAS INHIBITED ACCOMPLISHMENT OF THE RULE'S BENEFICIAL PURPOSE

An important conflict has arisen among the circuit courts of appeals over the appropriate standard of review in sanction cases under Rule 11 of the Federal Rules of Civil Procedure. Although the facts before the Court of Appeals for the District of Columbia Circuit in the instant action were undisputed, the court of appeals held that it was powerless to overturn the ruling of the district court denying Rule 11 sanctions unless there had been an abuse of the "wide discretion" of the district court. *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24, 32 (D.C. Cir. 1987), Appendix at p. 16a. The United States Courts of Appeals for the Second Circuit and the Ninth Circuit have reached the contrary conclusion, holding that whether specific conduct violates Rule 11 is plainly a legal issue and therefore reviewable *de novo*. *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 254 n.7 (2d Cir. 1985); *Hudson v. Moore Business Forms, Inc.*, 827 F.2d 450, 453 (9th Cir. 1987); *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986). (The positions of the other circuit courts of appeals are stated *infra* at pp. 8-10).

If allowed to stand uncorrected, the decision of the court of appeals will perpetuate the serious conflict among the circuits over the appropriate standard of review in Rule 11 cases. To permit this conflict over the proper standard of review to continue undermines the very purpose behind the 1983 amendment to the Rule. The essential purpose underlying the imposition of Rule 11 sanctions is to deter abusive litigation practices which tend to impose unjustified burdens on other parties, frustrate those who seek to vindicate their rights in court, obstruct the judicial process, and bring the civil justice system into disrepute. *See* Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181, 181-183 (1985).

Because the earlier rule had proven ineffective in curbing frivolous litigation and abusive practices, the 1983 amendment made significant changes in Rule 11: (1) it imposes an affirmative duty upon each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed;[2] (2) it tests the knowledge of the attorney by a reasonableness standard instead of requiring a finding of subjective bad faith;[3] and (3) by employing the imperative "shall" it stresses the mandatory nature of the imposition of sanctions when the Rule has been violated.[4] The amendment was "intended to reduce the reluctance of courts to impose sanctions . . . by emphasizing the responsibilities of the attorney. . . ." Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment.[5]

To refuse to sanction an attorney who certifies that the complaint, to the best of his knowledge, information, and belief formed after reasonable inquiry, is well grounded in fact, when the attorney has actual knowledge that serious allegations in the complaint are false, plainly violates the clear mandate of Rule 11 which requires the district court to impose sanctions if there is a violation of Rule 11. If circuit courts of appeals believe that the scope of their review of Rule 11 cases is

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2 *Eastway Construction Corp. v. City of New York*, 762 F.2d at 253.

3 *Id.* at 253-254; *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir. 1986).

4 *Eastway Construction Corp. v. City of New York*, 762 F.2d at 254 n.7; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985).

5 During the first two years alone following the adoption of the 1983 amendment, there were 233 reported district court cases in which sanctions under Rule 11 were considered. Furthermore, since relatively few district court opinions are published and since publication of a decision imposing sanctions against a lawyer may itself be regarded as a sanction, the actual number of Rule 11 decisions far exceeds those available through computerized legal research systems or in published form. Nelken, *Sanctions Under Amended Federal Rule 11—Some "Chilling" Problems in the Struggle Between Compensation and Punishment*, 74 Geo. L.J. 1313, 1326 (1986).

limited to an abuse of discretion standard and fail to exercise their powers of *de novo* review, the public is effectively denied the full and proper scope of judicial authority to assure that the beneficial purpose for which Rule 11 was devised is satisfied.

Petitioner does not dispute that the type of sanction to be imposed lies within the discretion of the district court and that the court of appeals can overturn such a determination only upon a finding that the district court has abused its discretion. Indeed, the circuits appear to be in agreement on this point. However, in this case, there was no challenge regarding the appropriateness of the Rule 11 sanction before the Court of Appeals for the District of Columbia Circuit since the district court never imposed sanctions in any form. The issues on appeal to the Court of Appeals for the District of Columbia Circuit were whether the undisputed conduct of plaintiffs' counsel, in signing a pleading containing allegations he knew to be false and misusing that pleading after being apprised of its falsity, violated Rule 11 and, if so, whether sanctions were therefore mandatory. The court of appeals affirmed the district court's denial of sanctions, applying an incorrect standard of review, *i.e.*, whether the district court had abused its discretion. Because the court of appeals in this case adopted an abuse of discretion standard, it evidently felt itself powerless to rectify a patent violation of the attorney's obligations under Rule 11.[6]

Although the facts in this proceeding are undisputed, the Court of Appeals for the District of Columbia Circuit held that the proper scope of its review of the district court's decision is limited to whether the district court has abused its discretion. 828 F.2d at 32, Appendix at p. 16a. In support of its position,

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6 The opinion of the court of appeals seems to suggest that since the false allegations were ultimately corrected, their certification by respondent was therefore excused. This reasoning, if adopted, would emasculate Rule 11, which seeks to deter such conduct by attorneys in the first instance.

the court of appeals cited its earlier decision in *Westmoreland v. CBS, Inc.*, 770 F.2d 1168 (D.C. Cir. 1985). In *Westmoreland*, the court of appeals stated: "In determining whether factual . . . reasons exist which may give rise to invocation of Rule 11 sanctions, the district court is accorded wide discretion." *Id.* at 1174.[7] Other courts of appeals have erroneously adopted the *Westmoreland* test. Citing *Westmoreland*, the Sixth Circuit also employed an abuse of discretion standard in reviewing a district court's denial of a motion for sanctions pursuant to Rule 11 based upon an insufficient pretrial factual investigation. *Albright v. Upjohn Co.*, 788 F.2d 1217, 1221-1222 (6th Cir. 1986). In addition, the Court of Appeals for the Eleventh Circuit has indicated its agreement with the scope of appellate review announced in *Westmoreland*. *See Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1987).

An abuse of discretion standard also has been adopted by the Fourth Circuit and the Seventh Circuit in reviewing whether a district court properly imposed sanctions. "[A] district court's imposition of Rule 11 sanctions is ordinarily entitled to deference by this Court and may not be disturbed except for abuse of discretion." *Stevens v. Lawyers Mutual Liability Insurance Co. of North Carolina*, 789 F.2d 1056, 1060 (4th Cir. 1986); *see also Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 987 (4th Cir. 1987). *See, e.g., Ordower v. Feldman*, 826 F.2d 1569, 1574 (7th Cir. 1987); *R.K. Harp Investment Corp. v. McQuade*, 825 F.2d 1101, 1103 (7th Cir. 1987) for the Seventh Circuit's adoption of the abuse of discretion standard.

Other circuits, however, apply a very different standard of review, which petitioner submits should be established by this Court as the proper standard. According to the Court of Appeals for the Ninth Circuit:

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7 In *Westmoreland*, the court of appeals held that it is empowered to conduct *de novo* review only when the district court has determined whether a pleading or motion is *legally* sufficient, since that involves a question of law. 770 F.2d at 1175.

> Because Rule 11 mandates sanctions when it is violated, the prevailing view of the courts of appeals is that whether specific conduct violated the Rule is *a legal question which must be reviewed de novo.*

Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d at 1538, emphasis added. The issue of whether specific conduct violates Rule 11 is a question of law, *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987), not a matter lying within the exercise of the discretion of the district court. Recently, the Fifth Circuit also held that the legal conclusion of a district court that a particular set of facts constitutes a violation of Rule 11 is reviewed *de novo*. *Robinson v. National Cash Register Co.*, 808 F.2d 1119, 1126 (5th Cir. 1987); *Thomas v. Capital Security Services, Inc.*, 812 F.2d 984, 989 (5th Cir. 1987).[8] The *de novo* review standard is consistent with that adopted by the Second Circuit in *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, where it held:

> A natural concomitant of a mandatory imposition of sanctions is a broadened scope of review by the Court of Appeals. Where the only question on appeal becomes whether, in fact, a pleading was groundless, we are in as good a position to determine the answer and, thus, we need not defer to the lower court's opinion.

Id. at 254 n.7.

The Ninth Circuit, in articulating standards of review in Rule 11 cases, has noted that appellate review of orders imposing or denying sanctions under Rule 11 may require a number of separate inquiries. *Hudson v. Moore Business*

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8 Prior to these decisions, the Fifth Circuit had held that review by the court of appeals of a decision imposing sanctions is limited to determining whether the district court abused its discretion. *Davis v. Vesland Enterprises*, 765 F.2d 494, 500 (5th Cir. 1985). The Fifth Circuit has determined to rehear *Thomas, en banc*, in order to clarify the proper standard of review. *See Shivangi v. Dean Witter Reynolds, Inc.*, 825 F.2d 885, 891 (5th Cir. 1987). These recent holdings highlight the ongoing struggle within the circuits to find the appropriate standard of review in Rule 11 cases.

Forms, Inc., 827 F.2d at 453; *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 828 (9th Cir. 1986). If the facts relied upon by the district court to establish a violation of Rule 11 are challenged on appeal, the court of appeals must review these factual determinations of the district court under a clearly erroneous standard. *Id.* However, if the legal conclusion of the district court as to whether those facts establish a violation of Rule 11 is disputed, then the court of appeals must review that legal conclusion *de novo*. *Id.* It is only when the appropriateness or severity of the sanction itself is challenged that the court of appeals' review is limited to the inquiry as to whether the district court has abused its discretion. *Id.*[9] This tripartite standard of review articulated in *Zaldivar* was expressly adopted by the Court of Appeals for the Eighth Circuit in *Kurkowski v. Volcker*, 819 F.2d 201, 203 n.8 (8th Cir. 1987).

The issues in this case afford the Court an opportunity to resolve the serious conflict among the circuit courts of appeals concerning the appropriate standard for reviewing the legal conclusions of district courts as to whether specific conduct violates Rule 11. The perpetuation of this most basic conflict undermines the very purpose of the 1983 amendment to Rule 11 and can only result in more confusion among the district courts, inconsistent applications of the Rule, frustrated litigants and a disillusioned public. A resolution of this conflict will bring clarity and certainty to this important matter and will more certainly assure that the salutary purposes underlying Rule 11 will be fulfilled.

In the instant case, it is undisputed that when Mr. Beckman framed the complaint asserting that UTA competed with Laker

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9 Petitioner has found no disagreement among the circuits with respect to the discretion afforded the district courts in fashioning an appropriate sanction. *Cf. Westmoreland v. CBS, Inc.*, 770 F.2d at 1174 (District of Columbia Circuit); *Albright v. Upjohn*, 788 F.2d at 1222 (Sixth Circuit); *Eastway Construction Corp. v. City of New York*, 762 F.2d at 254 n.7 (Second Circuit); *Davis v. Vesland Enterprises*, 765 F.2d at 500-501 (Fifth Circuit).

Airways and had joined in a predatory price-fixing conspiracy against Laker, he knew that UTA did not compete with Laker and had not joined in any way in the price-fixing activities alleged in the complaint. It is furthermore undisputed that Beckman used these allegations (which he knew to be false) to defend against a motion to dismiss. The significance of the standard of review is therefore crucial in this case. Under a sweeping "abuse of discretion" standard, the knowing violation in this case of the attorney's obligations becomes nonreviewable (notwithstanding the mandate of Rule 11 regarding groundless pleadings). On the other hand, under the *de novo* standard of review, the court of appeals is compelled to find a violation of Rule 11 and hence to vindicate the overriding objectives of deterring litigation abuses and the consequent bringing of the civil justice system into disrepute.

Moreover, failure to enforce rigorously the policy of Rule 11 in a case involving foreign litigants could well create concerns involving international comity. *Cf. Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa*, ____ U.S. ____, 107 S.Ct. 2542, 2557 (1987).

CONCLUSION

The Court of Appeals for the District of Columbia Circuit incorrectly applied an abuse of discretion standard in reviewing the decision of the district court denying petitioner's motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Whether specific conduct violates the mandate of Rule 11 is a question of law and therefore must be reviewed *de novo*. Further, the existing conflict among the circuit courts of appeals is undermining the fundamental purpose of the 1983 amendment to Rule 11. For these reasons, petitioner prays that a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-5468

DAVID WEAVER ADAMS, et al.,

Appellants

V.

PAN AMERICAN WORLD AIRWAYS, INC.
a domestic corporation, et al.

No. 86-5469

JOHN ERIC CLIFTON, et al.,

Appellants

V.

PAN AMERICAN WORLD AIRWAYS, INC.
a domestic corporation, et al.

No. 86-5538

JOHN ERIC CLIFTON, et al.

V.

PAN AMERICAN WORLD AIRWAYS, INC.,
a domestic corporation, et al.
UNION DE TRANSPORTS AERIENS,

Appellant

No. 86-5540

DAVID WEAVER ADAMS, et al.

V.

PAN AMERICAN WORLD AIRWAYS, INC.,
a domestic corporation, et al.
UNION DE TRANSPORTS AERIENS,

Appellant

Appeals from the United States District Court
for the District of Columbia
(Civil Action Nos. 86-00304 and 86-00629)

Argued March 20, 1987

Decided September 1, 1987

ROBERT M. BECKMAN, with whom DAVID M. KIRSTEIN was on the brief for appellants, David Weaver Adams, et al. in Nos. 86-5468 and 86-5469.

SIDNEY S. ROSDEITCHER, with whom LEONARD M. BEBCHICK, GARY D. WILSON, CAROL LEE, ROBERT B. VON MEHREN, ROBERT J. GENIESSE, FRED D. TURNAGE, MICHAEL W. DOLAN, DOUGLAS ROSENTHAL, WILLARD K. TOM, JAMES J. MURPHY, DAVID G. FEHER, LAWRENCE A. SHORT, WILLIAM KARAS, DAVID H. COBURN, ROBERT J. HIGGINS, JAMES VAN R. SPRINGER, EUGENE M. GOOTT, JOHN W. DICKEY, MARK MCCALL, VESELIN M. SCEKIC, ROBERT FABRIKANT and CELESTINO PINA were on the brief for appellees, Pan American, et al. in Nos. 86-5468 and 86-5469.

SANFORD C. MILLER, with whom MAURICE J. NOYER and JOHN MCCONNELL were on the brief for Union de Transports Aeriens, cross-appellant in Nos. 86-5548 and 86-5540 and appellee in Nos. 86-5468 and 86-5469.

JACOB A. STEIN, with whom PATRICK A. MALONE was on the brief for cross-appellee, Robert Beckman, in Nos. 86-5540 and 86-5538. GEORGE T. MANNING and CHARLES P. MURDTER also entered appearances for cross-appellee.

Before:

RUTH B. GINSBURG and WILLIAMS, *Circuit Judges*, and MCGOWAN, *Senior Circuit Judge*.

Opinion for the Court filed by Circuit Judge WILLIAMS.

WILLIAMS, Circuit Judge: This action is the fourth in a series of antitrust suits spawned by the collapse of Laker Airways Limited. The core allegation in each suit is that a group of airlines, an aircraft manufacturer and the latter's subsidiary conspired to drive Laker out of business, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2 (1982 and Supp. III 1985).[1] The first set of actions, *Laker I*,[2] was brought by Laker itself and culminated in a settlement requiring defendants to pay substantial sums to Laker's stockholders, creditors, and attorneys. *See Adams v. Pan American World Airways, Inc.*, 640 F. Supp. 683, 684 (D.D.C. 1986). The second, *Laker II*, was initiated by a class of transatlantic travelers asserting that the destruction of Laker forced them travel on more expensive airlines. This too was settled, with the defendants establishing a fund to provide

1 The persons named as defendants vary slightly from case to case.

2 *Laker Airways Ltd. v. Pan American World Airways, Inc.*, No. 82-3362 (D.D.C. filed Nov. 24, 1982); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, No. 83-0416 (D.D.C. filed Feb. 15, 1983); *Laker Airways Ltd. v. Union de Transport Aeriens*, No. 83-2791 (D.D.C. filed Sept. 22, 1983).

plaintiffs reduced airfares for a five-year period. *In re Atlantic Air Travel Antitrust Litigation*, No. 84-1013, mem. order (March 18, 1986 D.D.C.) (approving settlement). The third, *Laker III*, was brought by a travel agent claiming that the demise of Laker caused it to lose business. This action was dismissed for want of standing. *Brian Clewer, Inc. v. Pan American World Airways, Inc.*, No. 86-119 (C.D. Cal. May 21, 1986), *aff'd*, No. 86-6003 (9th Cir. Feb. 12, 1987).

Plaintiffs in the present action, a group of 313 former Laker employees,[3] allege that the illegal conspiracy cost them their jobs. As recompense they seek treble damages under Section 4 of the Clayton Act, 15 U.S.C. Section 15 (1982). The District Court concluded that plaintiffs lacked standing to bring an antitrust action and granted defendants' motion to dismiss. *Adams v. Pan American World Airways, Inc.*, 640 F. Supp. at 684-86. We affirm.

I.

Section 4 of the Clayton Act permits "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws" to bring a treble-damages action. 15 U.S.C. Section 15(a). This language, however, has never been read literally to allow suit by every party affected by an antitrust violation's "ripples of harm." *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 476-77 (1982).

The first prerequisite of maintaining a Section 4 action is that the plaintiff have suffered the *kind* of injury the antitrust laws were designed to prevent. "The antitrust laws . . . were enacted for 'the protection of *competition*, not *competitors*.' " *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488, 97 S.Ct. 690, 697, 50 L.Ed.2d 701 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320, 82 S.Ct. 1502, 1521, 8 L.Ed.2d 510 (1962)) (emphasis in original). Thus, only

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3 Plaintiffs represent the full range of personnel employed by a major airline, from pilots and flight attendants to managers, administrators and reservation agents, to engineers, mechanics and shop personnel. *Adams* Complaint Paragraphs 3-300M, Joint Appendix ("J.A.") at 44-150.

harm stemming from a reduction in competition qualifies as injury cognizable under the antitrust laws. *E.g.*, *id.*; *see also Cargill, Inc. v. Monfort of Colorado, Inc.*, ____ U.S. ____, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986) (extending *Brunswick* to claim for injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. Section 26 (1982)).

In addition to alleging "antitrust injury," the would-be claimant must show that it is a "proper plaintiff." *See Cargill*, 107 S.Ct. at 489 n.5; *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 535-46, 103 S.Ct. 897, 907-13, 74 L.Ed.2d 723 (1983). The Court's guiding principle has been to exclude as plaintiffs those whose suits might "undermine[ ] the effectiveness of treble-damages suits." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912 (citing *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 745, 97 S.Ct. 2061, 2074, 52 L.Ed.2d 707 (1977)). Claims of remote victims could severely complicate an action by more direct ones, raising the latters' costs of suit. Further, the interest in avoiding multiple recoveries may force courts to reduce awards to the direct victims. These impairments of direct victims' incentive to sue could jeopardize the effectiveness of the treble-damage claim. *Associated General*, 459 U.S. at 544-46, 103 S.Ct. at 911-13; *Blue Shield of Virginia v. McCready*, 457 U.S. at 475 n.11, 102 S.Ct. at 2546 n.11; *Illinois Brick*, 431 U.S. at 745, 97 S.Ct. at 2074; *cf. Cargill*, 107 S.Ct. at 489-90 nn.5, 6 (such concerns less relevant to suit for injunctive relief under Section 16 of the Clayton Act, as duplicative lawsuits and multiple recoveries not involved). *See generally* Page, *The Scope of Liability for Antitrust Violations*, 37 Stan.L.Rev. 1445, 1483-98 (1985); Landes & Posner, *Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws? An Economic Analysis of the Rule of Illinois Brick*, 46 U.Chi.L.Rev. 602, 608-25 (1979).

Accordingly, once plaintiff has crossed the threshold by alleging a genuine antitrust injury (one deriving from a decrease in competition), the Court directs us to consider such factors as whether the injury is direct (compared to that of other victims), whether the claim for damages is "speculative,"

and whether the case presents "the potential for duplicative recovery or complex apportionment of damages." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912; *see also id.* at 538-45, 103 S.Ct. at 908-12.[4]

While plaintiffs allege an antitrust injury, we find that the other factors controlling under *Associated General* preclude accepting them as proper plaintiffs.

II

A. ANTITRUST INJURY

The only market where an illegal restraint is alleged to have taken place is the transatlantic air transportation market. Amended *Adams* Complaint Paragraph 46, Joint Appendix ("J.A.") at 217-18. Plaintiffs supply services (their labor) to competitors selling in that market. While decreased competition will almost invariably harm consumers, its effects on suppliers such as plaintiffs are quite complex. Output is greater at competitive levels than in a cartelized market; everything else being equal, a competitive industry will require more employees, increasing job opportunities for persons such as plaintiffs. Indeed, plaintiffs represented at oral argument that *none* among them had managed to obtain employment comparable to that previously held with Laker. This suggests a direct loss from the contraction of output.

The effects do not stop there, however. Competition might conceivably raise wages. The more workers demanded (to handle higher output), the more lucrative the alternative occu-

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4 Plaintiffs vigorously assert that under the rubric of *Associated General* the defendant's specific intent to injure plaintiff is also a factor in the proper-plaintiff analysis. Although plaintiffs' position has some supporting precedent, *see Los Angeles Memorial Coliseum Commission v. National Football League*, 791 F.2d 1356, 1363 (9th Cir. 1986), we read *Associated General* as saying only that a showing of such intent may be required to establish an antitrust violation (and thus necessary to avoid a motion to dismiss, *see United States v. Columbia Steel Co.*, 334 U.S. 495, 522 and n.19, 68 S.Ct. 1107, 1121 and n.19, 92 L.Ed. 1533 (1948)), and may help focus the standing analysis. *See Associated General*, 459 U.S. at 537 and nn.35-37, 103 S.Ct. at 908 and nn.35-37.

pations from which workers must be attracted, and the higher the wages needed to attract them. But competition also generates strong pressure to cut costs, including wages. *Associated General*, 459 U.S. at 539, 103 S.Ct. at 909; *cf.* S. MORRISON & C. WINSTON, THE ECONOMIC EFFECTS OF AIRLINE DEREGULATION 43-46 (1986).[5] Workers as a group thus may well expect to do better in a cartelized industry, and may even seek to bring about cartelization.[6] *See Associated General*, 459 U.S. at 539-40, 103 S.Ct. at 909.

We cannot now determine (and probably could not even after trial) whether plaintiffs' gains from reduced competition predominate over their losses. An accurate assessment of the alleged cartelization's effect would require computation of the present discounted value of the net change in their expected income streams.[7] Even a Laker employee who has not yet obtained similar employment may do so tomorrow; if cartelization in fact raises wages, it may do so sufficiently to offset the present value of his losses (both those incurred before suit and expected to be incurred thereafter). On the other hand, it may not.

We believe that plaintiffs can properly be said to have alleged an antitrust injury—the failure to secure employment comparable to their Laker jobs from the date of Laker's folding to the filing of the complaint. Thus they have crossed

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5 The study finds a negative effect on wages. For the airlines, of course, decartelization was an aspect of deregulation. Regulation of prices on a cost-of-service basis has an independent tendency to relax cost control efforts, as firms can keep only a portion of their cost savings, so the case is not a pure test of the effects of increased competition.

6 Plaintiffs describe themselves as members of a "highly competent and highly motivated work force" willing to work for less than their counterparts employed by defendants. *See* Brief of Plaintiffs at 6. This does not support an inference that they are necessarily net losers from cartelization. If they have those attributes, they will surely be attractive candidates for jobs opening up in the cartelized transatlantic market.

7 The "expected" value of gains from cartelization would refer to the incremental wage income, discounted for the possibility that the plaintiff may secure no job because of the reduced output in the market as a whole.

the *Brunswick* threshold. But the ambiguity of cartelization's effects on their welfare fatally affects their case under the remaining factors pinpointed by *Associated General*.

B. DIRECTNESS OF INJURY

Comparison of this case with *Associated General* is complicated by "the absence of specific allegations" there. 459 U.S. at 541 n.46, 103 S.Ct. at 910 n.46. But the Court discerned two possible theories, one of which closely parallels the present case:[8] defendant association of contractors illegally coerced the victim landowners, who switched from victim union contractors to contractors employing non-union workers; the union contractors reduced hiring, causing workers to be less ready to join plaintiff union and pay dues. 459 U.S. at 541 n.46, 103 S.Ct. at 910 n.46. Here the chain is shorter: the victim Laker collapses; plaintiff employees lose their jobs. There is no need for a link paralleling the final one of *Associated General*, *i.e.*, workers responding by greater resistance to plaintiff.

But the Court appeared to denigrate the significance of the final necessary link. It observed that the harm to the union was "even more indirect than *the already indirect injury to its members*, yet a number of decisions have denied standing to employees with merely derivative injuries." *Id.* at 541 n.46, 103 S.Ct. at 910 n.46 (citations omitted) (emphasis added).

Plaintiffs here characterize the conspiracy as reaching the employees themselves. They claim that the illegal restraint weakened Laker to the point that it had to accept a coconspirator as receiver and that the coconspirator fired plaintiffs. Plaintiffs contend that this last step was vital to the alleged

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8 In the alternative theory, defendant association of contractors illegally coerced the victim landowners, who as a result switched to non-union contractors, who resisted plaintiff union's organizing efforts in order to avoid loss of business. The Court characterized this as involving injury from "the conduct of persons who are not victims of the conspiracy [the non-union contractors, who were in fact indirect beneficiaries of the conspiracy]," *id.* Plaintiffs' claim here cannot fairly be said to involve a link of that sort.

conspiracy because the competitive threat Laker posed would not die until the work force was dismantled.

This effort to remove the Laker link from the chain seems largely a matter of word play. The conspirators allegedly forced Laker to its knees. Whenever that happens to a firm, the web of contracts and relationships which form the essence of the firm will be dismantled. Astute counsel should not be able, merely by feats of characterization, to confer standing on all participants in that web.

However the final dismissal may be labelled, the harm to plaintiffs is one step removed from the harm to Laker. It follows that their claim will be more difficult to develop and prove. *See* Posner & Landes, *Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws? An Economic Analysis of the Rule of Illinois Brick*, 46 U.Chi.L.Rev. 602, 609-15 (1979) (comparing cost to indirect purchasers and direct purchasers of bringing an overcharge case). These difficulties, already alluded to, are discussed further in parts II.C and II.D below. It is a natural consequence of the extra link in the chain.

Nine years ago this court plainly classified injuries such as plaintiffs' as indirect: "Outside the context of professional sports, courts have regularly denied employees standing to sue for antitrust injuries to their employer, generally on the ground that any injury to the employee is 'indirect.' " *Smith v. Pro Football, Inc.*, 593 F.2d 1173, 1175 n.2 (D.C. Cir. 1978) (citation omitted). *Cf. Illinois Brick*, 431 U.S. 744-47, 97 S.Ct. at 2074-75 (indirect purchasers lack standing to raise antitrust claims).[9] Employees in professional sports have surmounted the standing inquiry simply because their injuries have stemmed at least in part from restraints in the labor market itself. *See, e.g., Radovich v. National Football League*, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957) (plaintiff alleg-

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9 Unlike *Illinois Brick*, which flatly precludes indirect purchasers from bringing antitrust actions in virtually all cases, *Associated General* does not go so far as to say that suppliers of an input never have standing to assert a claim for damages resulting from illegal restraints in their purchaser's market. *See* 459 U.S. at 540-42, 103 S.Ct. at 909-11.

edly blacklisted from employment); *Smith v. Pro Football, Inc.*, *supra* (plaintiff challenging system of restraints on his ability to sell his services to full range of competitors in market). Plaintiffs allege no such restraint in the airline labor market. *Cf. Associated General*, 459 U.S. at 527 and n.14, 103 S.Ct. at 903 and n.14 (plaintiff union alleged only a restraint in market for construction contracting and subcontracting and not in market for labor union services).

In a rare handful of cases courts have found standing for employees in the absence of restraints in the labor market. In *Ostrofe v. H.S. Crocker Co.*, 740 F.2d 739 (9th Cir. 1984), plaintiff was the victim of a boycott in the labor market, *id.* at 742-44, but the court also found separately that he had standing because his participation was essential to execution of the conspiracy and that no other party had so strong an incentive to vindicate the public interest in enforcement. *Id.* at 746-47.[10] *See also Donahue v. Pendleton Woolen Mills, Inc.*, 633 F. Supp. 1423 (S.D.N.Y. 1986) (finding standing for employees coerced into participating in illegal scheme). *But see Bichan v. Chemetron Corp.*, 681 F.2d 514 (7th Cir. 1982) (employee denied standing under similar circumstances), *cert. denied*, 460 U.S. 1016, 103 S.Ct. 1261, 75 L.Ed.2d 487 (1983). Obviously the special circumstance deemed controlling in *Ostrofe* and *Donahue*, even if we assume it is sufficient under Associated General, is absent here.

One decision antedating *Associated General* is probably not susceptible of any principled distinction. In *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967), the plaintiff was employed in the business of marketing magazine subscriptions to educational institutions under a "school plan," by which such institutions use students to sell subscriptions to the

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10 A prior decision in *Ostrofe*, 670 F.2d 1378 (9th Cir. 1982), was vacated and remanded by the Supreme Court for reconsideration in the light of *Associated General*. *See* 460 U.S. 1007, S.Ct. 1244, 75 L.Ed.2d 475 (1983). After the decision on remand, defendants applied for certiorari, but the case was dismissed at the request of the parties. *See* 469 U.S. 1200, 105 S.Ct. 1155, 84 L.Ed.2d 309 (1985).

public. He received a salary and commission. He lost his job following the acquisition of his employer in a merger, allegedly illegal, between two of the three largest firms in the field. The court appeared to apply two criteria. First, on the basis of plaintiff's entitlement to commissions, it found that he operated as a business rather than as a mere employee. Second, it applied a vague "proximate cause" test and stated in conclusory form that the injury was direct enough. We doubt if the case survives *Associated General*: (1) the first point has no apparent significance under *Associated General*; (2) the classification of the injury as direct seems inconsistent with *Associated General's* conclusion; and (3) the decision wholly disregards the other factors and policy values identified by *Associated General* as controlling.[11] *Cf. Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538 (9th Cir. 1987) (applying *Associated General* criteria to deny standing to employees compensated on share-of-revenue basis).

Thus, in the absence of special circumstances not present here, the cases provide no support for suit by employees of a firm victimized by antitrust violations.

Finally, the general rule against employee standing in cases involving no restraint in the labor market finds support in *Associated General's* suggestion that directness is a relative matter:

> The existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement diminishes the justification for allowing a more remote party such as the Union to perform the office of a private attorney general.

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11 *International Association of Heat & Frost Insulators & Asbestos Workers v. United Contractors Association, Inc.*, 483 F.2d 384 (3rd Cir. 1973), *amended*, 494 F.2d 1353 (3rd Cir. 1974), bears some resemblance to *Associated General*, though with the opposite outcome. Accordingly, we also doubt its viability. We note, however, that there were allegations of anticompetitive effects in the labor market itself, through use of sham agreements to thwart the plaintiff unions' organizational efforts. *See id.* at 392, 396.

459 U.S. at 542, 103 S.Ct. at 910-911. Of course the entire logic of *Associated General* supports such a relative approach: it is in large part to preserve the effectiveness of the superior plaintiffs that the inferior ones are denied standing.

Here superior plaintiffs clearly exist—both Laker itself and consumers of transatlantic air transportation. Indeed, they have already asserted claims in their own rights, received substantial settlement payments, and vindicated the public interest in antitrust enforcement.[12] *Compare Ostrofe v. H.S. Crocker Co.*, 740 F.2d at 746-47 (no one else had as strong an interest as discharged employee in vindicating public interest in antitrust enforcement) (alternative holding). Elusive as the concept of directness may be, we believe that the existence of immediate victims that suffer far less ambiguous antitrust injury militates significantly against standing for these plaintiffs.

C. Speculate Damages

We have already suggested the speculative character of plaintiffs' damages. Their job losses are real ones, and, as noted above, the expansion of output to competitive levels would (other things being equal) tend to increase their wages. But cartel participants' comparative laxity as to costs suggests that they may well ultimately secure more lucrative jobs than those that would have been available in the more competitive industry that would have resulted from the survival of Laker.

Nor is the level of competition in the industry the only relevant variable. In part plaintiffs' economic fate was tied specifically to Laker; we cannot assume its indefinite survival in an exceptionally volatile industry characterized by frequent

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12 Plaintiffs argue that because their injuries are discrete from those of Laker and its passengers, the latters' actions have not vindicated the public interest in antitrust enforcement, *i.e.*, their claims are not large enough to be an optimal deterrent. In fact, as we develop below, there is a high probability of substantial overlap between plaintiffs' injuries and those of Laker and its passengers.

mergers and bankruptcies, *see Adams v. Pan American World Airways, Inc.*, 640 F. Supp. at 685. Further, the prosperity of each of the 313 plaintiffs would depend on how long he or she would have remained with Laker, with what advancement, what salary increases, etc. Finally the court would need to consider each plaintiff's prospects of obtaining comparable employment in aviation or other industries.[13]

Plaintiffs in essence recognize the complexity of calculating their damages but claim that assessing "damages in this case is no more speculative, abstract or impractical than in personal injury cases where assessment of lost past and future earnings are routinely made by the jury." Brief of Plaintiff at 39 (citing *District of Columbia v. Barriteau*, 399 A.2d 563 (D.C. App. 1979)). But the present claim is in antitrust, not tort. Here injury turns on the impact of the alleged wrong on the relevant market itself, so that the fact finders cannot take a market structure as given, as they would in a personal injury litigation. Moreover, *Associated General* requires exclusion of marginally injured parties whose claims tend to complicate the litigation and thereby impair the effective enforcement of the antitrust laws. *See, e.g., Associated General*, 459 U.S. at 543-45, 103 S.Ct. at 911-12.

D. Risk of Duplicative Recoveries or Complex Apportionment of Damages.

In *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977), the Supreme Court held that an indirect customer could not bring a treble-damage action for price increases deriving from sales to its suppliers in violation of the

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13 Plaintiffs focus on their inability to obtain employment in the cartelized transatlantic air transportation market. We see no reason why they are so limited. All of them are qualified for employment in other air transportation markets, and many of their jobs with Laker have exact equivalents outside the air transportation industry.

Plaintiffs also claim to have suffered from emotional distress. If for some reason not revealed to us such injury qualified as an injury to plaintiffs' "business or property," its measurement would further complicate the litigation.

antitrust laws. Recognizing that multiple recovery should be avoided, it noted that allowance of indirect purchaser suits would compel apportionment of the recovery. Besides adding complexity to the case, this apportionment would cut down the direct purchasers' recovery and diffuse the incentive to bring treble-damage actions. *Id.* at 735-48, 97 S.Ct. at 2069-76; *see also Associated General*, 459 U.S. at 544, 103 S.Ct. at 911-12.

The present case raises a similar risk of leading either to multiple recovery or to unduly complex litigation. In *Illinois Brick*, the potential conflict was over a single amount, the illegal overcharge; to avoid multiple recoveries, it would be necessary to divide that amount between direct and indirect purchasers on some consistent theory governing the extent to which direct purchasers would pass on the overcharge and the damage recovery. Separate litigations would allow direct purchasers to recover on one set of assumptions as to elasticities, market structure and market behavior, indirect purchasers to recover on another set. *See* 431 U.S. at 741-42, 97 S.Ct. at 2072-73. This would generate powerful claims for joinder of all potential plaintiffs under Federal Rule of Civil Procedure 19, massively complicating the litigation. *Id.* at 737-41, 97 S.Ct. at 2070-72.

Here, concededly, there is no common fund in the sense of the overcharge at stake in *Illinois Brick*. But the problem of conflicting premises is no different. In *Laker I*, Laker's creditors, stockholders, and attorneys sought damages premised on a projection of high profits for Laker. In *Laker II*, Laker's passengers asserted damages premised on Laker's fares being exceptionally low. Laker's employees now seek to collect damages premised on plentiful jobs and generous salaries and benefits. Without joinder it is impossible to avoid liability on inconsistent theories; with joinder would come increased complexity and litigation costs for the directly injured parties.

One may, indeed, conceptualize the case as involving claims on a single quantity of wealth—the increased consumer and

producer surplus that a thriving Laker would have generated.[14] The risks of duplicative recoveries on inconsistent theories are in no substantive way different from those risks in *Illinois Brick*. The Court regarded this concern as relevant even to *Associated General*, where the obscurity of the claim left some uncertainty as to just how plaintiffs' claims would relate to those of the direct victims. 459 U.S. at 544-45, 103 S.Ct. at 911-12. Here, more clearly than there, allowance of the suit would load the direct victims' action with costly excess baggage.

Nor is it an answer that Laker and its passengers have already settled their claims. Standing must be determined by uniform principles, not by accidents of sequence. A rule opening the door to marginal plaintiffs after settlement would virtually force defendants not to settle until all possible complainants were brought into the action or until the statute of limitations had run. Such behavior would clearly make it more difficult to prosecute antitrust violations and "undermine[ ] the effectiveness of treble-damages suits." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912. Besides, allowance of the present suit would unequivocally expose defendants to the risk of multiple liability, an alternative the Court has emphatically rejected. *Illinois Brick*, 431 U.S. at 730-31, 97 S.Ct. at 2066-67 (citing *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 264, 92 S.Ct. 885, 892, 31 L.Ed.2d 184 (1972)). *See also id.* at 731 n.11, 97 S.Ct. at 2067 n.11 (recognizing that risk of multiple liability is particularly great where some parties settle).

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14 The extra producer surplus (especially for purposes of this case) includes any increments in plaintiffs' wage income over what they would have been able to earn without Laker's presence in the market. A worker is of course a producer. The wage necessary to attract the marginal worker sets the wage of the inframarginal workers. The latter enjoy producer surplus consisting of the difference between the prevailing wage and the wage necessary to attract them to the jobs in question. As already noted, the survival of Laker would under some circumstances increase that wage. Thus the producer surplus at issue in Laker's survival encompasses the surplus not only of Laker but also of the inframarginal workers. Ascertainment of the likely allocation of total producer surplus between these (and other suppliers as well) would be a complex task, to say the least.

The controlling factors under *Associated General* compel the conclusion that plaintiffs lack standing.

III.

Before the District Court defendant Union de Transports Aeriens ("UTA") moved for sanctions against plaintiffs' attorney for signing a complaint containing false allegations in violation of Federal Rule of Civil Procedure 11. Plaintiffs' complaint, which was prepared under extreme time pressures, alleged that UTA competed with Laker in the transatlantic market. In fact, UTA's only service originating in the United States was between Los Angeles and Tahiti. When UTA called the error to plaintiffs' counsel's attention, he did not acknowledge the inaccuracy but instead seized the offensive. He claimed that UTA had raised a matter outside of the pleadings; accordingly, if the court considered UTA's allegations, it would turn UTA's pending motions to dismiss into a motion for summary judgment, thereby justifying discovery by plaintiffs. Within a short time thereafter, however, plaintiffs' counsel amended the complaint to remove the inaccuracy.

The District Court denied UTA's motion without explanation in a one-sentence footnote. Although the District Court's treatment of this matter was lamentably terse, we may overturn its ruling only if it abused its "wide discretion" to determine whether grounds exist to support Rule 11 sanctions. *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985). The record is not strong enough for us to find an abuse of discretion.

The decision below is

Affirmed.

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civ. A. Nos. 86-0304, 86-0629

June 30, 1986

DAVID WEAVER ADAMS, et al., *Plaintiffs*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., et al., *Defendants*.

JOHN ERIC CLIFTON, et al., *Plaintiffs*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., et al., *Defendants*.

MEMORANDUM

HAROLD H. GREENE, *District Judge*.

The instant action is the fourth antitrust suit growing out of the collapse of Laker Airways.[1] The first, and principal action (Laker I) was brought in this Court by Laker against Pan American Airways, TWA, British Airways, British Caledonian Airways, Swissair, Lufthansa German, McDonnell Douglas, Belgian World Airways, Royal Dutch Airways, Union de

1 This action actually represents two separate lawsuits, *Adams v. Pan American World Airways*, C.A. 86-0304, and *Clifton v. Pan American World Airways*, C.A. 86-0629, consolidated on March 3, 1986 by this Court. For practical purposes, however, this is a single action and will be referred to as such in this Memorandum.

Transports Aeriens and Scandinavian Airlines System.[2] Following complex pretrial motions,[3] the parties agreed on a settlement, which yielded substantial payments to Laker's stockholders, its creditors, and its attorneys. A second lawsuit (Laker II)[4] was brought in this Court as a class action on behalf of individuals who claimed that they would have travelled to Great Britain on Laker Airways had it been in existence, but who used the more expensive conventional carriers instead following Laker's demise. This action was likewise settled.[5] The defendants established a fund from which individual transatlantic travellers during a certain period could draw for coupons which reduced transatlantic fares on certain carriers during a five-year period. A third lawsuit (Laker III) filed in the central District of California, was brought on behalf of travel agents who claimed to have lost business as a consequence of the Laker demise brought about by defendants' alleged antitrust conspiracy. That action was dismissed for lack of standing.[6]

The instant action is brought on behalf of a number of former employees of Laker Airways who claim to have been damaged as a result of the same conspiracy that was before this

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2 Initially these were three lawsuits, but in the course of the litigation these actions were consolidated. The three cases were assigned civil actions numbers 82-3362, 83-0416, and 83-2791.

3 *See Laker Airways v. Pan American World Airways*, 604 F. Supp. 280 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 596 F. Supp. 202 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 577 F. Supp. 348 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 568 F. Supp. 811 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 559 F. Supp. 1124 (1983).

4 This action consisted of five lawsuits consolidated under the caption *In re Atlantic Air Travel Antitrust Litigation*, C.A. 84-1013.

5 Since this was a class action, the proposed settlement agreement in Laker II was approved by the Court following a public protest period and a hearing. *In re Atlantic Air Travel Antitrust Litigation*, C.A. 84-1013, Memorandum Order of March 18, 1986 (D.D.C.).

6 *Brian Clewer, Inc. v. Pan American World Airways*, CV 86-119 CBM, May 14, 1986 (Consuelo Marshall, J.).

Court in Laker I and II and before the court in California in Laker III.[7] The defendants have moved to dismiss.[8] The Court has carefully considered the motion, the briefs in support of the motion, in opposition thereto, and in reply, the various affidavits, as well as the arguments advanced at an oral hearing, and it has concluded that the motion must be granted.

Section 4 of the Clayton Act permits recovery of damages by individuals who are injured in their business or property by reason of a violation of the antitrust laws. Notwithstanding the broad language of Section 4, it is well established that persons who are only indirectly or tangentially affected by an antitrust violation may not recover under the antitrust laws. *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 534-35, 103 S.Ct. 897, 906-07, 74 L.Ed.2d 723 (1983). Indeed, it is safe to generalize that, barring unusual circumstances, only consumers or competitors in the market in which trade has been restrained have standing to bring a Section 4 action. *Id.* at 539, 103 S.Ct. at 909. As the Supreme Court noted in *Associated General Contractors*, the antitrust laws were enacted "to assure customers" the benefit of price competition, and its central interest is the protection of the economic freedom of "participants in the relevant market." *Id.* at 538, 103 S.Ct. at 908. Thus, it is not surprising that there is not a single reported case where employees of the victim of an antitrust violation have been allowed to recover for loss of employment resulting from the injury to the employer.

Plaintiffs rely to the contrary primarily upon two cases—*Radovich v. National Football League*, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957), and *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 102 S.Ct. 2540, 73 L.Ed.2d 149 (1982), but neither supports their argument. Radovich, a professional football player, claimed to have been personally

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7 The number of defendants in the various actions is not always precisely the same, but the principal defendants (Pan American, TWA, British Airways) appear in all the actions.

8 In addition, defendant Union de Transports Aeriens (UTA) has requested sanctions against plaintiffs' counsel.

blacklisted by all the employers in professional football, and the Supreme Court held that on account of this group boycott his complaint did state a cause of action. The Laker employees do not and cannot allege any kind of boycott; when their employer was forced out of business, they had to look for employment elsewhere, and in this endeavor some were successful and some were not. Similarly, the allegations in *McCready* are unlike the claims made here. The market in that case was that for psychotherapeutic services, and the plaintiff was both a consumer of the services and a competitor in the restrained market. *See Associated General Contractors*, *supra*, 459 U.S. at 538-39, 103 S.Ct. at 908-09. Plaintiffs here, of course, qualify under neither category. Indeed, plaintiffs do not even participate in the same market as the defendants. Laker and the airlines against which it brought suit were engaged in the market for air transportation; the plaintiffs in the instant action are sellers in the various labor markets in which the airlines are buyers.

The well-established proposition that only the direct victims of antitrust violations may recover is supported in this case by a number of relevant factors.

First. Any damages would, of necessity, be extremely speculative. That is so if only because it is not at all clear, nor could it be proved with any degree of certainty, how long Laker Airways would have been in business even if there had been no antitrust conspiracy. The airline industry has been quite volatile in recent years; Laker's collapse occurred when other airlines were losing money; and mergers and bankruptcies have occurred with some frequency. Thus, it is not certain how long Laker would have operated, and thus how long the plaintiffs would have had employment with Laker. Beyond that, each of the plaintiffs would be faced with a second level of uncertainty with regard to his individual losses—how long he would have been employed by Laker Airways or any other airline, at what salary, with what seniority, with what job security, with what

fringe benefits, and the like. Finally, plaintiffs also request damages for emotional distress—an item particularly difficult to quantify in this type of case.

Where demonstration of each plaintiff's injury and damages promises unduly long and complicated proceedings involving massive evidence and complicated theories, antitrust standing is likely to be denied. *See Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 493, 88 S.Ct. 2224, 2231, 20 L.Ed.2d 1231 (1968); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977); *McCready*, *supra*, 457 U.S. at 475 n.11, 102 S.Ct. at 2546 n.11; *Associated General Contractors v. Carpenters*, *supra*, 459 U.S. at 542-44, 103 S.Ct. at 910-12.

Second. As indicated above, the instant action is not the first to seek damages arising from the collapse of Laker Airways. The first lawsuit provided compensation to the stockholders, the creditors, and their attorneys; the second awarded compensation to would-be travellers on Laker; and the third lawsuit (unsuccessfully) sought damages for travel agents. All the lawsuits assumed high profits by Laker in spite of its low fares, and complex apportionment of the (assumed) revenues would have to take place in the event the instant action were permitted to proceed. It is to be noted, too, that these plaintiffs, as Laker employees, were also creditors and entitled to share in the proceeds of the settlement of the first Laker action.

Third. As stated above, the principal lawsuit arising out of the collapse of Laker Airways (Laker I) was settled, and so was the action on behalf of the transatlantic travellers (Laker II). Indeed, settlement without trial is common in major antitrust actions, and it is particularly to be preferred where, as here, difficult and delicate problems arising from conflicting national laws and policies are involved, calling in the end for

direct confrontations between governments and courts.[9] Yet defendants in such lawsuits are unlikely to enter into settlements if each such settlement can immediately be followed by a new treble damage lawsuit based on the same allegations as the first, the only real distinction being that some new group of alleged victims is bringing the action.[10]

For the reasons stated, defendants' motion will be granted[11] and the action will be dismissed.

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9 *See Laker Airways v. Pan American World Airways*, 604 F. Supp. 280 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 596 F. Supp. 202 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 577 F. Supp. 348 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 559 F. Supp. 1124 (D.D.C. 1983).

10 None of these obstacles is overcome by plaintiffs' allegations in the complaint that defendants intended to injure them. *See Associated General Contractors v. Carpenters, supra*, 459 U.S. at 537, 103 S.Ct. at 908.

11 However the Court denies defendant UTA's request for sanctions.

Plaintiffs:

David Weaver Adams, Edgar Hubert Adams, Sandra Alice Adcock, Mohamed Salim Akram, Jack G. Allum, Richard Andrews Anderson, Stephen John Anderson, Malcolm Bruce Anderton, Geoffrey Sigurd Andreasen, Geoffrey William Ansell, Michael Fredric Ashby, Richard Leslie Axby, Geoffrey Baggaley, Alan Frank Bampton, Anthony Owen Barber, Anne Louise Todd Barrett, Richard Hugh Barton, Alfred George Batchelor, Michael George Bealch, Donald Lawrence Beattie, Gerard Rene Yvon Bergot, Nicholas Adrian Collier Bevan, Colin Bicknell, Allan Gordon George Blake, Aubrey Denis Blake, Colin Blake, George William Blewett, Anna Blonstein, Simon Kenneth Carnon Boston, Harry Bowden-Smith, Christopher James Boyle, Beverley Janine Blum Boyle, Stephen Brand, Michael Stuart Bree, Geoffrey John Brookes, Raymond Peter Brown, Donald Bryant, Keith Bullock, Kurt Bunce, William Henry Laurence Bunce, Timothy Joseph Burnett, Edward Thomas Burns, Pamela Jane Burtles, John Francis Byrnes, Cuthbert Calixte, David Edward Carter, Eric John Carter, Shelley Thea Streatfield Carter, Geoffrey Bryan Cartner, Keith Anthony Castle, Michael John George Cater, Ian Chalmers, Harold Charles Chapman, Grenville Norman Church, John Henry Kerswell Clark, Gerald Alfred Clifton, John Eric Clifton, Robert Gordon Cockerill, Albert Ernest Coleman, Robert Douglas Coles, Alfred Collens, Patrick John Connington, Peter Cort, James O. Court, David William Coxhill, Carolyn Barbara Craddock, P. Cremin, Trevor Cresswell, William John Cronin, Robert Peter Gordon Crooke, Robin Ian Kenneth Cross, Anthony Joseph Cruz, Terence Alan Curry, Jack Cuthew, Roderick Trevor Daniels, Michael John Davies, Timothy Alfred Davies, Ian Charles Deloford, George William Devall, Jonathan Christian Devaux, Gregory B. Dix, Jean Docherty, Myriam Jeanne Georgette Dorman, Ronald Drakeford, Theresa M. Dugandzic, Linda A. Earls, Kenneth William Edwards, Martin Emery, Donald James Evans, Lawrence Evans, K.V. Fairbrother, Michael George Farmer, Francis James Fawcus, Terence Arthur Fen-

some, Edward Jock Ferrier, John Beverley Finbow, Duncan Stanley Fisher, Michael John Flake, William James Forrest, Judy Patricia Fortune, Murray Kirkham Fullarton, John Leonard William Fuller, Roger L. Fulljames, Robert James Fulton, Cormak Keven Gantly, Richard Hugh Gardner, Brian Terence Gerry, William George Gevaux, Colin Francis Glover, Claire Elizabeth Godden, David John Godwin, Roger Goff, John Francis Goodall, Reginald Charles Tig Gow, Clive Frederick Greatorex, John Alan Greenhead, Gordon Stewart Grierson, Nina Pamela Griffin, Stephen Thomas Gurton, Carolyn Irene Guy, David John Christopher Hall, Derek Charles Edward Harper, Ralph Frank Harper, Malcolm Charles Stuart Harris, Alan George Harrison, Jason Archibald Harrison, Maurice Anthony Hart, James William Hartley, Fred Haslam, Brian Allan Hay, Raymond George Hayward, Raymond John Hazzard, Stephen Charles Heffer, Alan Collis Hellary, Michael Houghton Hewitt, Peter Grant Hill, Peter Jeremy Hobbs, Peter Leonard Hook, Ronald Samuel John Hook, Eric Wynne Hopkins, Ivor Stephen Howard, Vaughan Richard Bonnell Howell, Michael Keith Hubbard, Bernadette Anne Hughes, Graham Frederick Humberstone, Garnet Richard Hunt, Peter John Hutley, Timothy John Hutton, Keith James, Stephen James, John C. Jarvis, Alan Charles Jenkins, Martin Stewart Jones, Russell Clement Jones, Betty Kelly Judge, Colin Kaletsky, Claude Keebe, Thomas F. Keely, Ian Philip Kelly, Anthony Brian Kennedy, J.W. Kindleysides, Peter Ilda Klesnil, John Alan Knight, Nick Koutsis, Graham Philip Lamb, Anthony Stuart Lighton, Michael John Limpkin, Ralph Brian Kneen Lines, Philip Patrick William Lowe, Anthony Machin, Patrick John MaClaughlin, Marcus MaClean, Paul Allan Mansbridge, Christine Irene Manson, James McGregor Conlogue Manson, Robert John Marsh, Geoffrey Caselton Martin, Godfrey Donovan Mason, Edward Paul Maspero, Peter Alan May, Philip Alan McCartney, John McClennan, Allan Charles McCormack, Katherine McDonald, Nuala Ann McGowan, Melvyn Henry McKenzie, Ian McLean, Nigel Justin McLean, William Wood McNab, John Richard Mealor, Henry John Meaney, Terence John Michaels, Leonard Francis

George Middleton, Ian Gordon Milne, Anthony James Murphy, Brian George Murphy, George Bancroft Newby, Sandra Anne Newby, Brian Newman, Adrian Keith Nicholl-Morris, Andrew Malcolm Noller, Malcolm Edward Norris, Donald Nelson Osborn, Robert Winston Osborne, John Richard Page, Cyril Hugh Palmer, Terence Hugh Peacock, Peter Pearman, Ann Elizabeth Pelham, Anthony James Pelham, Richard Francis Pickles, Robert Edward Pitts, Anthony James Poirrier, Joy Ann Poirrier, Jeffrey Brian Price, Peter Christopher Price, Truda Jill Proctor, Christopher Sigfried Radford, Desmond Harold Randall, David Frederick Randyll, Barry Norman Rawlins, David Clarence Read, Lorna Renner, Frederick William Richardson, John Leonard Richardson, Albert Edward Riches, Michael William Robertson, B.M.O. Robinson, Frank William Robinson, Robert William Robinson, Peter Alban Rockhill, Hugh Stewart Ross, Henry Charles Runacres, Brian Edward Harry Russell, Theresa E. Ryan, Derek Frank Salmon, Alex Sanchez, Brian Victor Sandford, Frank Roy Scholtka, Douglas Brian Scott, Michael Ormond Searle, Robert John Selmes, Peter Michael Shaw, Douglas Frederick Sibley, John Simpson, Andrew David Sims, Kenneth James Sinclair, Timothy Hepburn Sindall, Rosemary Skegg, Geoffrey Skelton, John Derek Skelton, Douglas A. Smith, Kingsley Smith, Rodney Smith, George E. Spencer, John Jerrard Spouse, Gregory Miles Stapleton, Richard Patrick William Steele, Michael Timothy Stent, Andrew Toby Satchwell Stevenson, John Gerard Steward, Jane Helen Stone, Geoffrey Norman Street, Anne Elizabeth Stroud, Martin Robert Brandon Sumner, Graham Richard Swift, John Frederick Tayler, David Marshall Taylor, Kenneth John Taylor, Glen Douglas Tennant, Michael Arthur Tester, Donald Thomas, Leslie Thomas, Peter Anthony Thompson, Walter Thompson, Christopher Tilney, Leslie Cambridge Toghill, Ronald Victor Townsend, Alistair John Travers-Wakeford, Norman Donovan Turnbull, Kim Susan Tyrrell, Cees Van Dooren, Susan Lynn Van Dooren, Elizabeth Variello, Michael John Veal, Alan Walter Ward, John Henry Ward, Robin Leonard Sidney Warren, Sheila K. Webb, Victor George Wells, Peter Anthony Wheeler, Brian Wheel-

house, Colin Guy White, Michael John Frederick White, Reginald N. White, Robert Ian White, Peter John Wittle, David Reginald Wiggins, Brenda Margaret Williams, Christopher John Hemmings Williams, David Anthony Williams, Helga Darien Williams, Thomas Frederick John Williams, David James Willis, Anthony Clifford Willson-Pepper, John Wilson, Jane Anne Wilton, Arthur Roy Winn, David William Woods, John Desmond Paton Worsley, Frank David Wright, Gillian Clare Wright, Violet Elizabeth Marion Wyatt, P.B. Yeo, Barbara Zientek.

Defendants:

Pan American World Airways, Inc.
Trans World Airlines, Inc.
British Airways Plc
Deutsche Lufthansa Aktiengesellschaft
Swissair, Swiss Air Transport Company Limited
British Caledonian Airways Limited
McDonnell Douglas Corporation
McDonnell Douglas Finance Corporation
Sabena, Belgian World Airlines
KLM Royal Dutch Airlines
Scandinavian Airlines System
Linee Aeree Italiane, S.p.A.
Iberia Airlines of Spain

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-3362

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*,

Defendants.

Civil Action No. 83-0416

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

SABENA, BELGIAN WORLD AIRLINES, *et al.*,

Defendants.

Civil Action No. 83-2791

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

UNION DE TRANSPORTS AERIENS, *et al.*,

Defendants.

ANSWERS OF PLAINTIFF LAKER AIRWAYS LIMITED TO FIRST SET OF INTERROGATORIES OF DEFENDANT UNION DE TRANSPORTS AERIENS TO PLAINTIFF LAKER AIRWAYS LIMITED

* * *

Interrogatory No. 5: State whether you contend that UTA at any time "offer[ed] . . . high-cost service at prices below the cost of those services" in order to "destroy transatlantic charters and Laker's scheduled Skytrain service." If you do so contend:

a. State the basis for your contention;

b. State when such services were offered;

c. State on what routes such services were offered.

Response to Interrogatory No. 5: No.

Interrogatory No. 6: State whether you contend that UTA agreed that it would charge fares that would result in its "short-term financial losses" with the intention of recouping such losses by raising prices after elimination of charter services and Laker's scheduled Skytrain service. If you do so contend:

a. State the basis for your contention;

b. Specify all persons with whom UTA so agreed and the fares agreed to;

c. State when UTA so agreed;

d. State whether you contend that, but for such agreement, Laker would not have ceased operations.

Response to Interrogatory No. 6: No.

* * *

Interrogatory No. 9: State whether you contend that UTA was one of the "European IATA members, including defendants SAS, [which allegedly] found that Laker was attracting many passengers traveling between Continental Europe and the United States, thereby competing with those airlines and putting downward pressure on their fares." If you do so contend, state the basis for your contention.

Response to Interrogatory No. 9: No.

Interrogatory No. 10: State whether you contend that Laker was competing with UTA and putting downward pressure on its fares. If you do so contend, state the basis for your contention.

Response to Interrogatory No. 10: No.

Interrogatory No. 11: State whether you contend that Laker held licenses to operate any route on which UTA operated. If you do so contend:

a. State the basis for your contention;

b. Identify the routes;

c. State the date on which each license was granted.

Response to Interrogatory No. 11: No.

* * *

s/Robert M. Beckman
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Attorneys for Plaintiff
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Dated: September 18, 1984

(2)

Supreme Court, U.S.
FILED
FEB 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-873

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNION DE TRANSPORTS AERIENS,

Petitioners,

-against-

ROBERT M. BECKMAN, ESQ.,

Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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25 pp

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Does Fed. R. Civ. P. 11 require sanctions for inadvertent errors in a pleading that do not affect the validity of the pleading and which were timely corrected?

II. In reviewing a district court's denial of a motion for Rule 11 sanctions in a case where an attorney's intent is in dispute, is the court of appeals required to make a *de novo* determination of the attorney's state of mind?

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF QUESTIONS PRESENTED ..	i
TABLE OF AUTHORITIES	iii
COUNTER-STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	5
1.The Facts Are Not Undisputed As The Petitioner Asserts	5
2.There Is No Conflict Among The Circuits	6
3.The Record Is Not Developed For Adequate Review By This Court	9
CONCLUSION	10
APPENDIX	
Affidavit Of Robert M. Beckman In Opposition To UTA's Supplemental Memorandum	1a

TABLE OF AUTHORITIES

CASES:	Page
Eastway Const. Corp. v. City of New York, 762 F.2d 243 (2d Cir. 1985)	8
Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986)	8,10
Hudson v. Moore Business Forms, Inc., 827 F.2d 450 (9th Cir. 1987)	8
Westmoreland v. CBS, Inc., 770 F.2d 1168 (D.C. Cir. 1985)	7
RULES:	
Fed. R. Civ. P. 11	2,4,6,9
Fed. R. Civ. P. 15	4
Fed. R. Civ. P. 56(f)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-873

UNION DE TRANSPORTS AERIENS,

Petitioners,

-against-

ROBERT M. BECKMAN, ESQ.,

Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

COUNTER-STATEMENT OF THE CASE

This case concerns an editing mistake made by plaintiffs' counsel in the drafting of a lengthy and complex complaint in *Adams v. Pan American World Airways, Inc., et al.*, Civil No. 86- 0304. The complaint contained 345 paragraphs and was 161 pages long. As the court of appeals noted, the complaint "was prepared under extreme time pressures."[1]

There were 11 defendants, nine of which were airlines. As a drafting device, the nine airline defendants

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[1] *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24, 32 (D.C. Cir. 1987).

were referred to by the defined term "airline defendants." In six places in the complaint, the use of the generic term was incorrect because the allegation, which did apply to eight of the nine airline defendants, did not apply to Union de Transport Aeriens (UTA). These allegations related to price fixing by Laker's existing competitors on the North Atlantic. UTA did not operate on the North Atlantic. UTA operated in Europe and the Far East. Plaintiffs' counsel knew this fact. The complaint should have been worded in those six places: "airline defendants except UTA." It was so corrected in a timely manner by an amended complaint before UTA moved for sanctions in the District Court under Fed. R. Civ. P. 11.

The error had no substantive impact on the claims against UTA in the complaint. While UTA did not directly compete with Laker, Laker had proposed to expand its operations into markets UTA was serving, and Laker thus posed a competitive threat to UTA. UTA was deeply involved in the conspiracy to put Laker out of business.

In the prior case, *Laker Airways, Ltd. v. Pan American World Airways*, Civil Nos. 82-3362, 83-416 and 83-2791, discovery had revealed that UTA's chairman had sent telexes to the top executives of eight other airlines suggesting they jointly pressure certain lenders to breach their agreement to provide Laker with necessary financing. UTA's efforts were successful. UTA's actions directly led to the destruction of Laker Airways.[2]

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[2] This evidence is described in an affidavit by plaintiff's counsel Robert M. Beckman, Esquire, the respondent here. The affidavit

On March 7, 1986, UTA and the other defendants in *Adams* filed a joint motion to dismiss alleging that the plaintiffs lacked standing. Then on March 19, 1986, UTA filed a "Supplemental Memorandum" in support of the motion to dismiss, identifying the error in the complaint and arguing that it was an additional ground to dismiss. The supplemental memorandum implied that once the error was corrected, there were no remaining allegations against UTA. This was false.

Plaintiffs' opposition to UTA's supplemental memorandum was filed on April 11, 1986, four days after plaintiffs responded to the main motion to dismiss by all defendants. The supplemental opposition focused on showing the factual basis for alleging that UTA had conspired with the other defendants to destroy the plaintiffs' workplace. This opposition included an affidavit by respondent Beckman reciting in detail the evidence showing that UTA had in fact participated in crucial aspects of the conspiracy to destroy Laker and that Laker was in the process of expanding into UTA's markets in Europe and the Far East. The affidavit further stated, pursuant to Fed. R. Civ. P. 56(f), that discovery was needed to demonstrate that there was a genuine issue of material fact as to whether UTA's participation in the conspiracy was motivated by its fear of Laker's proposed expansion into UTA's markets before the trial court could properly rule on UTA's motion for summary judgment based on UTA's status as a non-competitor of Laker.

The error of including UTA by implication in the price-fixing allegations relating to Laker's existing

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was filed in the District Court and is included here as an appendix.

competitors did not affect the issue of whether the plaintiffs stated a claim against UTA. Accordingly, the plaintiffs' supplemental opposition did not address the error resulting from failing to exclude UTA from the generic term "airline defendants" in six places in the complaint, which counsel regarded as a non-substantive housekeeping matter.

On April 14, 1986, UTA's counsel sent respondent Beckman a demand that he dismiss the lawsuit against UTA, contending again that there was no basis for including UTA as a defendant. UTA's demand did not address the facts shown in plaintiffs' April 11, 1986 opposition concerning UTA's participation in the conspiracy.

On April 28, 1986, plaintiffs filed a motion under Fed. R. Civ. P. 15 to amend the complaint to correct the six places where the complaint erroneously included UTA by implication. The amended complaint also added factual allegations that spelled out UTA's leading role in the conspiracy to destroy Laker's financing.

UTA then filed its motion for Rule 11 sanctions on May 7, 1986. On June 30, 1986, the district court granted the defendants' motion to dismiss but denied UTA's motion for sanctions in a footnote. *Adams v. Pan American World Airways, Inc.*, 640 F. Supp. 683, 686 n.11 (D.D.C. 1986). The court of appeals affirmed the district court on both issues.[3]

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[3] Plaintiffs have petitioned for a writ of certiorari on the issue of their standing to sue. See Adams v. Pan American World Airways, Inc., No. 87-1218.

REASONS FOR DENYING THE WRIT

1. THE FACTS ARE NOT UNDISPUTED AS THE PETITIONER ASSERTS.

As respondent's Counter-Statement of the Case makes clear, UTA's view of what happened in the District Court is far from undisputed. This is not a case of bald and deliberate misrepresentation. It was an editing error made under time pressure that was not caught before the complaint was filed because the error was one of implication, not of express misstatement.

In addition, contrary to UTA, plaintiffs' counsel never "continued to rely on the false assertions in resisting a motion to dismiss the complaint."[4] Rather, plaintiffs' counsel focused on refuting UTA's misleading contention that correction of the error would eliminate it from the case. Plaintiffs' counsel thus set out evidence showing the District Court how UTA had participated in the anti-competitive conspiracy and that UTA was a potential competitor of Laker, and then within a short time made the housekeeping corrections to eliminate UTA from the allegations of price-fixing by the eight other airline defendants.[5] Contrary to UTA's representations here, UTA never made

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[4] UTA Petition for Writ of Certiorari at 3.

[5] UTA thus seriously misleads this court when it asserts that Beckman knowingly used false allegations to defend against the motion to dismiss. Petition for Writ at 11. The errors in the complaint were corrected long before the district court ruled on the motion to dismiss. It was UTA, not Beckman, that tried to capitalize unfairly on the errors in the complaint by using them to argue misleadingly that UTA had no role in the conspiracy against Laker.

a formal demand simply that the errors be corrected but demanded instead that the entire complaint against it be dismissed. Indeed, UTA's position as to the alleged intent of the respondent is nonsensical: There is no motive that would explain why counsel would deliberately make an allegation that his adversary can easily and conclusively disprove. The only possible explanation is simple error.

It was this sharp factual dispute as to the respondent's alleged state of mind that the District Court implicitly resolved against UTA by its terse denial of the motion for sanctions. The District Court Judge, Harold Greene, is well known as a careful and thoughtful judge. In this case, he was familiar with counsel on all sides, having presided over the original *Laker* suit. His decision showed that he viewed UTA's sanctions effort as a meritless tempest in a teapot in which UTA was trying to convert an innocent mistake into something sinister. UTA is still rearguing the same facts that failed to persuade both courts below.

2. THERE IS NO CONFLICT AMONG THE CIRCUITS.

There is no conflict among the circuits as petitioner UTA suggests in the law concerning the scrutiny with which appellate courts review Rule 11 decisions by district courts. UTA misreads the decision of the appellate court below in trying to manufacture a conflict.

The court below, citing the lead case in its circuit, held that it could reverse the district court "only if it abused its 'wide discretion' to determine whether grounds exist to support Rule 11 sanctions." *Adams v. Pan American World Airways, Inc., supra,* 828 F.2d at 32, citing *Westmoreland v. CBS, Inc.,* 770

F.2d 1168, 1174 (D.C. Cir. 1985). This is a reference to the district court's fact-finding role, not to its conclusions of law. The full quotation from the cited passage of *Westmoreland* makes this clear:

> In determining whether factual (1) or dilatory or bad faith (3) reasons exist which may give rise to invocation of Rule 11 sanctions, the district court is accorded wide discretion. For the district court has tasted the flavor of the litigation and is in the best position to make these kinds of determinations. However, once the court finds that these factors exist, Rule 11 *requires* that sanctions of some sort be imposed.

Westmoreland v. CBS, Inc., supra, 770 F.2d at 1174-75 (emphasis in original).[6]

We read the D.C. Circuit's opinions in *Adams* and *Westmoreland* simply to hold that the fact-finding inquiry is subject to review for abuse of discretion, whereas the legal issue of whether specific conduct violates the rule is subject to *de novo* review—once it has been determined what the conduct is.

The circuits that UTA cites as being in conflict with the D.C. Circuit are in fact in accord with this view. The Ninth Circuit, for example, has made an observation about the advantage of the district court very similar to the D.C. Circuit's statement quoted above in *Westmoreland*.

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[6] The court also said that *de novo* review, rather than review for abuse of discretion, would be appropriate where the issue involved the legal sufficiency of the pleading. *Id.*, 770 F.2d at 1175. That is not an issue here.

> [A]lthough this court reviews *de novo* whether particular conduct is sanctionable, it is necessarily handicapped in its review because it is more distant from the parties and events than the district court.

Hudson v. Moore Business Forms, Inc., 827 F.2d 450, 453-54 (9th Cir. 1987). The court went on to say that the district court's personal contact with the attorneys was a factor to weigh in the appellate review process.[7]

The only other circuit cited by UTA as being in alleged conflict with the D.C. Circuit is the Second Circuit. That court, in the case cited by UTA, simply observed: "Where the only question on appeal becomes whether, in fact, a pleading was groundless, we are in as good a position to determine the answer and, thus, we need not defer to the lower court's opinion." *Eastway Const. Corp. v. City of New York*, 762 F.2d 243, 254 n.7 (2d Cir. 1985).

The issue here is very different. UTA's petition for writ of certiorari, as well as all of its arguments in the court below, make plain that its motion for sanctions hinges on the respondent's alleged state of mind.[8] That is an issue of fact, not of law, and no

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[7] The other Ninth Circuit case cited by UTA is in accord with respondent's view of the law. In *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986), the court stated: "[W]hether specific conduct violated the Rule is a legal question which must be reviewed de novo. [citation omitted] If there is any dispute as to factual determinations concerning the conduct, the determinations would be reviewed under a clearly erroneous standard."

[8] For example, the petition for writ of certiorari argues that Beckman's conduct "can hardly be deemed inadvertent." Petition at 4.

court to our knowledge has held that an appellate court that has never seen the respondent lawyer face-to-face can judge *de novo* his state of mind.

3. THE RECORD IS NOT DEVELOPED FOR ADEQUATE REVIEW BY THIS COURT.

The District Court made no express findings on UTA's motion for sanctions. Impliedly, the court simply found the motion for sanctions wholly meritless and gave it appropriately short shrift. As noted above, the facts as to respondent's state of mind and his motive are in sharp dispute. At most, the only relief UTA could request would be an order of remand for the district court to enter findings of fact and explain its reasons for denying sanctions. That would be a useless exercise here. There were multiple appropriate reasons for denying sanctions which were fully briefed in both courts below. Besides the reasons discussed above—that respondent Beckman simply lacked the sinister intent alleged by UTA—another reason is that the errors did not affect the validity of the complaint against UTA.

Rule 11 is directed by its plain language to the overall factual and legal basis for the pleading. It is not aimed at rooting out and sanctioning every error in an otherwise meritorious pleading. As one court held:

> Nothing in the language of the Rule or the Advisory Committee Notes supports the view that the Rule empowers the district court to impose sanctions on lawyers simply because a particular argument or ground for relief contained in a non-frivolous motion is found by the district court to be unjustified.

Golden Eagle Distributing Corp. v. Burroughs Corp., supra, 801 F.2d at 1540-41.

Because UTA participated in the conspiracy against Laker, the error in the complaint gave UTA no grounds to urge dismissal apart from those raised by its fellow conspirators. Therefore UTA was put to no extra work because of plaintiffs' counsel's mistake. A simple denial of the inaccurate allegations in an answer to the complaint would have protected UTA's position.[9] Instead, UTA multiplied the proceedings needlessly by a series of petulant pleadings in the district court, by a meritless appeal, and by this now meritless petition for certiorari.

CONCLUSION

This is not a case where undisputed facts present a clean legal issue to this court for resolution. Rather, the record reflects sharp factual dispute about a lawyer's motive and intent. There is no conflict among the circuits as to the deference by appellate courts to a district court's fact-findings in this peculiarly fact-intensive issue of state of mind. In any case, UTA is the perpetrator, not the victim, of abusive litigation tactics by its continued pursuit of sanctions for an inadvertent error in an otherwise valid complaint that caused UTA no injury.

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[9] In addition, as we noted in both courts below, UTA not once tried to resolve the problem informally. A five-minute telephone call would have straightened out the misunderstanding. That UTA so plainly was pouncing on its adversary's mistakes to seize advantage no doubt affected the district court's decision to deny sanctions.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID WEAVER ADAMS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No.. 86-0304
PAN AMERICAN WORLD AIRWAYS, INC.,	)	
	)	
et al.,	)	
	)	
Defendants	)	
	)	
	)	
JOHN ERIC CLIFTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PAN AMERICAN WORLD AIRWAYS, INC.,	)	
	)	
et al.,	)	
	)	
Defendants.	)	Civil Action
	)	No. 86-0629

AFFIDIVIT OF ROBERT M. BECKMAN
In OPPOSITION TO
UTA'S SUPPLEMENTAL MEMORANDUM

Robert M. Beckman, being duly sworn, states as follows on information and belief based on personal knowledge:

1. I am familiar with the documents produced by UTA and other defendants in response to discovery requests in

Laker Airways Limited v. Pan American World Airways, Civil Action Nos. 82-3362, 83-0416 and 83-2791. These documents were returned to the defendants pursuant to the Settlement Agreement. Copies of certain documents are in public records. In addition, I have notes and recollections of the information developed in discovery in that case.

2. UTA has submitted a document in *Adams v. Pan American World Airways* which it has styled "Supplemental Memorandum of UTA in Support of Defendant's Motion to Dismiss the Complaint." UTA's Supplemental Memorandum asserts that facts alleged in plaintiffs' Complaint are "erroneous". In support of its assertions, UTA submits an affidavit of its counsel, Sanford C. Miller, Esq.

3. On April 7 1986, the undersigned telephoned Mr. Miller and asked for clarification of UTA's intention in submitting an affidavit in support of its Motion to Dismiss under Fed.R.Civ.P. 12(b)(6). The undersigned pointed out to Mr. Miller that the presentation by UTA of matters outside the pleading if not excluded by the court, could lead to the motion being treated as one for summary judgment and disposed of as provided in Rule 56. If UTA's Supplemental Memorandum were to be so treated by the court, then Fed.R.Civ.P. 12(b) provides that "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." The undersigned pointed out to Mr. Miller that UTA and the other defendants had moved for a stay of discovery (which the court granted on April 7, 1986, subsequent to the telephone conversation with Mr. Miller). The undersigned explained to Mr. Miller that UTA had placed the plaintiffs on the horns of dilemma. If UTA is seeking summary judgment, the plaintiffs must submit specific facts as would be admissible in evidence to show that there are genuine issues for trial. Plaintiffs are unable to present fully the facts essential to justify their position because discovery is stayed, at the request of UTA and the other defendants.

Mr. Miller declined to clarify UTA's intention or to take any steps to resolve the dilemma.

4. The undersigned believes that it is highly unlikely that the court will consider UTA's factual submission since the court has stayed discovery. However, to be sure that the plaintiffs' position is protected, this affidavit is submitted (1) To satisfy Fed.R.Civ.P. 56(f) which requires an affidavit showing that plaintiffs are unable to present fully the facts that counter the facts set forth by UTA, and (2) to show that there are genuine issues for trial as to UTA's participation in the alleged conspiracy.

5. UTA argues in its Supplemental Memorandum that the "critical factual nexus between UTA and Laker Airways set forth by plaintiffs is erroneous." Supp. Mem. p. 6. UTA does not make clear what this assertion has to do with the issue of standing. It is also unclear what UTA means by a "critical factual nexus."

6. UTA argues that it was not a competitor of Laker Airways. UTA does not state what conclusion it draws from this premise. To the extent that the court would rely on this assertion in disposing of the Motion to Dismiss, this affidavit shows facts that raise genuine issues as to whether UTA and Laker Airways were competitors and as to whether UTA joined the conspiracy to destroy the plaintiffs' workplace, as alleged in the Complaint.

7. Exhibits C and D to Mr. Miller's affidavit show that UTA operated airline service between points in Europe. Those exhibits also show that UTA operated airline service to Australia. Sir Freddie Laker has testified that Laker Airways was planning to provide air transportation within Europe in competition with UTA and was planning to provide air transportation to Australia that would compete with UTA. UTA's President, Mr. Rene Lapautre, has testified under oath in his deposition in the *Laker Airways* case, that he knew that Laker Airways wanted to operate

low fare scheduled service in Europe and that Laker Airways had applied for rights to serve Australia.

8. Mr. Lapautre has testified that on January 28, 1982, he sent a telex message to the Chief Executives of KLM, SAS, Swissair, Lufthansa, Alitalia, British Caledonian, Sabena and Iberia, stating as follows:

> I would like to draw your personal attention on the situation presently developing between Laker and MDC/General Electric by which the two manufacturers would invest 9.4 million USD and have a 18 to 28 percent holding in this carrier. It is totally inacceptable to see two of our main suppliers utilizing funds generated by their main clients to provide direct assistance to the one who very openly and knowingly generated the disastrous crisis which we are in. I suggest we make known to the presidents of McDonnell Douglas and General Electric our opposition to such a move. Could you advise your comments.

9. Sir Adam Thomson, the Chief Executive of British Caledonian, replied to Mr. Lapautre's telex of January 28, 1982 by a telex dated January 29, 1982, stating as follows:

> BCAL has already taken the action you propose. The financial support is much greater than the 9.4 million U.S.D. you mention.

Mr. Lapautre testified that he received this telex from Sir Adam Thomson.

10. On February 2, 1982, Sir Adam Thomson, Chief Executive of British Caledonian, sent copies by telex to the Chief Executives of UTA, KLM, SAS, Swissair, Lufthansa, Alitalia and Sabena of a telex message he sent on February 2, 1982, to Sanford N. McDonnell, Chairman of the Board of McDonnell Douglas, and John Brizendine, President of Douglas Aircraft Co., stating as follows:

> Assuming information supplied by John Gentling to Trevor Boud this morning re MDCs massive support and investment for Laker Airways is correct BCAL has no further interest in McDonnell Douglas aircraft.

Mr. Lapautre testified that he received this telex.

11. Mr. Lapautre testified that on February 2, 1982, Mr. Lapautre sent copies by telex to the Chief Executives of KLM, SAS, Swissair, Lufthansa, Alitalia, British Caledonian, Sabena and Iberia of a telex message he sent on February 2, 1982, to Sanford McDonnell, Chairman of MDC, and Brian Rowe, a Senior Executive of General Electric, stating as follows:

> I am addressing you as a longstanding client of your company with which UTA has done business valued millions of dollars. I am extremely upset by the information about the intended commitment of your company in Laker Airways.
>
> This is a fundamental departing from the established neutral position of every manufacturer which cannot be accepted. Furthermore it is ironical that you would provide direct support to the one who openly and knowingly generated the disastrous crisis which we are in. It would be outrageous to the whole air transport industry and particularly to your clients who are providing funds to your company.
>
> Such a decision from your part would undoubtedly bear consequences on our future relationship and I do hope you will avoid entering such undesirable situation.
>
> Best regards
> R. Lapautre/Chairman

12. Mr. Lapautre testified that he received a telex message on February 2, 1982, from the Chief Executive of Swissair addressed to Mr. Lapautre and the Chief Executives of KLM, SAS, Lufthansa, Alitalia, Sabena, British Caledonian and Iberia, stating as follows:

> Following telex just sent to Sanford N. McDonnell Chairman of Board McDonnell Douglas and J. Brizendine President Douglas aircraft:
>
> "In view of negotiations between MDC and Laker Swissair would like to express deep concern if any debt portion should be converted into any form of equity. Such a move would be detrimental to our current good business relations."

13. Mr. Lapautre testified that he received a telex message on February 3, 1982, from the Chief Executive of Lufthansa addressed to Mr. Lapautre and also to the Chief Executives of KLM, Alitalia, British Caledonian, Sabena and Iberia, stating as follows:

> Subject MDC/GE Salvage Operation vs. Laker
>
> Held telconf yesterday with Sandy McDonnell, Ed Hood and Warren Kraemer. Had visit of James McMillan, President, MDC Finance Corp. today in Frankfurt.
>
> Admittedly bank consortium in its Laker survival plan requires MDC to transform 46 million USD of outstanding debt into nonvoting preferred stock. Further to inject 8 million USD cash into Laker in order to secure immediate liquidity demands and bring him over March and April.
>
> Figures for GE are 10 and 2 million USD respectively.
>
> GE refused for principal reasons involvement of this type with airline but seems prepared to contribute indirectly via MDC. MDC itself feels com-

pelled to protect somehow own risks in magnitude of 50 million USD, disregarding impact on other airlines.

Expressed following position of Lufthansa in a very clear language:

1. Understand financial pressures however are extremely concerned about such business practices resulting in further damage to the industry.
2. Very obviously Laker was poor in private equity but aimed to jeopardize manufacturers main clients with precarious fare policies in a quite presumptuous manner.
3. Sellers credit protection has to be limited to A/C mortgages or similar securities but nothing more. Otherwise Lufthansa will require direct business risk sharing provisions in any future purchase contract with MDC/GE and will cease MDF 100 evaluation with immediate effect.
4. Major clients of MDC/GE directly or indirectly lost much more through Lakers' malpractices than now at stake for the suppliers. Are not prepared to suffer one year longer and continue normal business relations with manufacturers involved!

MDC/GE seemed quite alerted by our interference and promised to review their position in light of arguments presented. There were also a lot of excuses all disregarding impact on airlines. For reasons understandable GE at present seems to react more responsive than MDC.

Will press Airbus Industrie to offer cancellation rights A 300/A 310 without penalty if such right is granted to Laker.

14. Mr. Lapautre testified that he received a telex message on February 3, 1982, from the Chief Executive of Sabena which was also addressed to the Chief Executives of Swissair, KLM, SAS, Lufthansa, Alitalia, British Caledonian and Iberia, stating as follows:

> Please find hereafter copy my telex sent to MDC and GE to the attention of Sanford N. McDonnell, J. Brizendine and Brian Rowe.
>
> "In view of numerous press releases about negotiations between MDC and Laker I wish to express deep concern over the reported attitude you could be adopting which goes beyond a manufacturer's role. Such practices would adversely affect our present good business relationship.
>
> Best regards,
> C. Van Rafelghem"

15. Mr. Lapautre testified that he received a telex message on February 4, 1982, from the Chief Executive of KLM which was also addressed to the Chief Executives of Lufthansa, SAS, Swissair, Alitalia, British Caledonian, Sabena and Iberia, stating as follows:

> Sent following Telex to MDC and GE Attention S. McDonnell, J. Brizendine, B. Rowe
>
> "Please note KLM is deeply concerned about recent reports of planned financial assistance by MDC and GE to Laker Airways. See for instance Wall Street Journal of Jan. 21. According to rumors actual investment will be much higher than dlrs 9.4 Mil as mentioned. Would appreciate learning in how far above info is correct."

16. Mr. Lapautre testified that he received a telex message on February 4, 1982, from the Chief Executive of Alitalia which was also addressed to the Chief Executives of KLM, Lufthansa, Sabena, British Caledonian and Iberia, stating as follows:

I quote telex sent 2 Feb t Sanford McDonnell and General Electric.

"Having received information on your intention to invest a conspicuous amount of capital in Laker Airways I would appreciate your confirming if affirmative. If so I feel obliged to advise you that this move by an aircraft engine manufacturer may have severe consequences on our future decision of choice of suppliers for new equipment. According to my view there is an incompatibility that suppliers become shareholders of their own clients for evident reasons."

17. The foregoing demonstrates UTA's participation in the alleged conspiracy to destroy the plaintiffs' workplace. The undersigned avers that the documents and testimony of the defendants and their alleged co-conspirators will produce more evidence of the complicity of UTA in the alleged conspiracy. The evidence will show that UTA was a driving force in forming the group of MDC and GE customers that made a significant contribution to the destruction of plaintiffs' workplace. These additional facts cannot be product by affidavit because the witnesses and custodians of the documents are hostile parties. The stay of discovery prevents plaintiffs from obtaining further facts.

/s/Robert M. Beckman
Robert M. Beckman (638)

City of Washington : ss
District of Columbia :

Sworn to and subscribed before me this 11th day of April 1986.

Notary Public

FILED
FEB 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-873

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNION DE TRANSPORTS AERIENS,

Petitioner,

—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITIONER'S REPLY MEMORANDUM

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TABLE OF AUTHORITIES

Cases: PAGE

Adams v. Pan American World Airways, Inc., 828 F.2d 24 (D.C. Cir. 1987) 4

Brown v. Federation of State Medical Boards of the United States, 830 F.2d 1429 (7th Cir. 1987)..... 1

Duncan v. WJLA-TV, Inc., 106 F.R.D. 4 (D.D.C. 1984) 2

Eastway Construction Corp. v. City of New York, 762 F.2d 243 (2d Cir. 1985) 2, 3

Frantz v. United States Power Lifting Federation, 1987-2 Trade Cas. (CCH) ¶ 67,832 (7th Cir. 1987)..... 5

Golden Eagle Distributing Corp. v. Burroughs Corp., 809 F.2d 584 (9th Cir. 1987)..... 4

Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986)..... 4

Hudson v. Moore Business Forms, Inc., 827 F.2d 450 (9th Cir. 1987)..... 5

Weisman v. Rivlin, 598 F. Supp. 724 (D.D.C. 1984).... 2

Westmoreland v. CBS, Inc., 770 F.2d 1168 (D.C. Cir. 1985)..... 3

Zaldivar v. City of Los Angeles, 780 F.2d 823 (9th Cir. 1986)..... 2, 3

Rules:

Federal Rules of Civil Procedure, Rule 11 .....*passim*

Other Authorities:

ABA Section of Litigation, *Sanctions, Rule 11 and Other Powers* (2d ed. 1988) 3

Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment..... 2

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PETITIONER'S REPLY MEMORANDUM

Respondent Robert M. Beckman argues that his state of mind at the time of his Rule 11 certification of the complaint is in dispute, and therefore the abuse of discretion standard used by the Court of Appeals for the District of Columbia is appropriate for reviewing the district court's decision on whether to impose sanctions. This argument reflects a fundamental misconception as to the purpose and operation of Rule 11. Mr. Beckman's state of mind is not relevant in the context of Rule 11.[1] Rule 11 does not require willful violation. The Rule places an affirmative duty on attorneys to assure that

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1 Although not relevant to the initial decision to impose sanctions (because that is a question of law), equitable factors may be an ingredient in the discretionary aspect of Rule 11—determining the sanction. *Brown v. Federation of State Medical Boards of the United States*, 830 F.2d 1429, 1439 (7th Cir. 1987).

pleadings are reasonable in light of the facts and the law. *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (2d Cir. 1985). "Simply put, subjective good faith no longer provides the safe harbor it once did." *Id.*; *see also Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir. 1986). If the court finds that a pleading is not well grounded in fact or law and that no reasonable inquiry was made before filing, the court is required to impose a sanction without regard to whether the failure was willful or inadvertent. *Weisman v. Rivlin*, 598 F. Supp. 724, 726 (D.D.C. 1984); *see also Duncan v. WJLA-TV, Inc.*, 106 F.R.D. 4, 6 (D.D.C. 1984).[2]

The real questions posed by the decision of the Court of Appeals for the District of Columbia, therefore, are as presented in UTA's petition. The issues in this case afford the Court an opportunity to resolve the serious conflict among the circuit courts of appeals concerning the appropriate standard for reviewing the legal conclusions of the district courts as to whether specific conduct violates Rule 11. The *de novo* review standard adopted by several of the circuit courts of appeals for review of lower court determinations to impose sanctions tends to promote uniformity, while the abuse of discretion standard used by other circuit courts inevitably results in inconsistent application of Rule 11. Contrary to Mr. Beckman's assertion that there is no conflict (Opposition at 6), the conflict among the circuit courts of appeals over the appropriate standard of review in Rule 11 cases was recently noted by the American Bar Association Section of Litigation in the second edition of its

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2 The reference to willfulness in the former text of Rule 11 was, in fact, deleted from amended Rule 11. *See* Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment.

publication on sanctions. ABA Section of Litigation, *Sanctions, Rule 11 and Other Powers*, at 14-15 (2d ed. 1988).[3]

The opposing brief filed by Mr. Beckman fails to cite a single case to support his contention that UTA's motion for sanctions "hinges upon the respondent's alleged state of mind" (Opposition at 8). This is not surprising since there is no real dispute among the circuit courts of appeals that Rule 11 no longer requires a finding of bad faith. *See, e.g., Eastway Construction Corp. v. City of New York*, 762 F.2d at 253-254; *Zaldivar v. City of Los Angeles*, 780 F.2d at 829; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1177 (D.C. Cir. 1985). Placing an attorney's state of mind in issue would serve only to insulate from culpability the very conduct which Rule 11 was intended to deter and would frustrate the Rule's objective seeking to assure adequate pre-filing investigation and well-founded allegations.

Although UTA did assert in the Statement of the Case in its petition that Mr. Beckman's refusal to correct the complaint when the false allegations were brought to his attention could "hardly be deemed inadvertent" (Petition at 4), petitioner never suggested that its motion for sanctions was in any way dependent upon a finding of willfulness. Mr. Beckman's assertion that UTA has misled the Court concerning his use of these false allegations is also baseless. Mr. Beckman does not dispute the fact that he had personal knowledge that UTA did not compete with Laker Airways and had not participated in any alleged price-fixing conspiracy at the time he certified the complaint in this matter *and* at the time he responded to UTA's

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3 Though not directly relevant to the issues raised in this petition, respondent's brief highlights yet another conflict among the circuit courts. While the Circuit Court for the District of Columbia has held and maintains that the district court's fact-finding inquiry is subject to review for abuse of discretion (Opposition at 7), the Ninth Circuit has ruled that factual determinations are to be reviewed under a clearly erroneous standard (Opposition at 8).

supplemental filing.[4] Yet, in spite of this knowledge, Mr. Beckman failed to correct the misrepresentations contained in the complaint when they were brought to his attention. As the Court of Appeals for the District of Columbia noted:

> When UTA called the error to plaintiffs' counsel's attention, he did not acknowledge the inaccuracy but instead seized the offensive.

Adams v. Pan American World Airways, Inc., 828 F.2d 24, 32 (D.C. Cir. 1987).

Mr. Beckman also argues that "Rule 11 is directed by its plain language to the overall factual and legal basis for the pleading" (Opposition at 9). In support of his position that Rule 11 is "not aimed at rooting out and sanctioning every error in an otherwise meritorious pleading" (Opposition at 9), respondent cites the Ninth Circuit's opinion in *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531 (9th Cir. 1986). It is significant to note that *Golden Eagle* dealt with legal argument—an area in which courts are extremely reluctant to chill an attorney's enthusiasm or creativity in pursuing legal theories—and not with misrepresentations of fact. It is also telling that the five judges who dissented from the denial of *en banc* consideration in *Golden Eagle* stated that they would not limit the district court's consideration to "the frivolity of the paper," but would impose sanctions for misrepresentations made to the court. 809 F.2d 584, 585-586 (9th Cir. 1987). Moreover, in its latest pronouncement on the subject, the Ninth Circuit described the *Golden Eagle* holding as limited to "the manner in which counsel had framed his supporting

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4 While it is not relevant to the false allegations against UTA at issue in this appeal, Mr. Beckman has once again attempted to create the false impression that Laker Airways was a potential competitor of UTA because Laker had applied for a license to provide service between the U.K. and Australia, and was planning to provide air transportation within Europe.

UTA provided service between France and Australia, not between the U.K. and Australia. Nor was UTA an airline with an inter-European route system. UTA provided service from different cities in France to points in Africa, Indonesia and Australia.

arguments" and rejected the broader interpretation urged upon it that *Golden Eagle* condones frivolous arguments in non-frivolous papers. *Hudson v. Moore Business Forms, Inc.*, 827 F.2d 450, 456 (9th Cir. 1987). Even more recently, the Seventh Circuit has held that "Rule 11 applies to all statements in papers it covers." *Frantz v. United States Power Lifting Federation*, 1987-2 Trade Cas. (CCH) ¶ 67,832, at 59,511 (7th Cir. 1987).

The assertion of a single allegedly sufficient (and adequately investigated) claim should not permit counsel to file other unsubstantiated claims as riders. Each claim takes up valuable judicial time to hear and resolve and imposes substantial burdens in terms of time and effort on those who must respond to each claim. A single claim in an antitrust case may occasion the expenditure of hundreds or even thousands of hours, as the opposing party and its counsel attempt to sort out and respond to the allegations and the legal theories underlying them. *Id.* Rule 11 stands as an important deterrent to the assertion of unsubstantiated claims with their attendant burdens and costs, and it is essential that the salutary purposes underlying the Rule not be thwarted.

Respectfully submitted,

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